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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,756	11/10/2003	Gregory D. Fee	MS1-1809US	4286

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EXAMINER	
BAYOU, YONAS A	

ART UNIT	PAPER NUMBER
2434	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/705,756	FEE ET AL.	
	Examiner	Art Unit	
	YONAS BAYOU	2434	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 January 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,8,10,11,13,14,17-21,24,26,27,29,30,33-35 and 37-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 8, 10-11, 13-14, 17-21, 24, 26-27, 29-30, 33-35, and 37-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to applicant's response filed on 01/27/2009.

2. Claims 1-5, 8, 10-11, 13-14, 17-21, 24, 26-27, 29-30, 33-35, and 37-43 are pending.

3. Claims 6-7, 9, 12, 15-16, 22-23, 25, 28, 31-32, 36 and 44-48 are cancelled.

4. Claims 1, 17 and 33 are amended.

5. Examiner withdraws objection to the claims due to correction by the applicant.

6. NEW 35 U.S.C § 101 rejection on claims 1-5, 8, 10-11, 13-14, 17-21, 24, 26-27, 29-30, 33-35 and 37-43, please see the office action below.

7. Applicant's arguments have been fully considered.

8. When responding to the Office action, Applicant is advised to clearly point out the patentable novelty the claims present in view of the state of the art disclosed by the reference(s) cited or the objection made. A showing of how the amendments avoid such references or objections must also be present. See 37 C.F.R. 1.111(c).

Response to Arguments

1. Applicant's arguments with respect to claims 1-5, 8, 10-11, 13-14, 17-21, 24, 26-27, 29-30, 33-35, and 37-43 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-5, 8, 10-11 and 13-14 are rejected under 35 U.S.C. 101 based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. *Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.*

Claims 17-21, 24, 26-27 and 29-30 are rejected under 35 U.S.C. 101 based on the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*. Descriptive material can be characterized as either "functional descriptive material" or "non-functional descriptive material." Both types of "descriptive material" are non-statutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). Merely claiming non-functional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical

application of the algorithm was in connection with the programming of a general purpose computer.").

Claims 33-35 and 37-43 are rejected under 35 U.S.C. 101 based on claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring phenomenon) since it fails to produce a useful, concrete and tangible result.

Specifically, the claimed subject matter does not produce a tangible result because the claimed subject matter fails to produce a result that is limited to having real world value rather than a result that may be interpreted to be abstract in nature as, for example, a thought, a computation, or manipulated data. More specifically, the claimed subject matter provides for the conditional statement : "if the application evidence satisfies the at least one condition specified in a security policy specification for trusting the at least one application, wherein the security policy specification defines multiple policy levels, and wherein permissions are granted on a computer system based on the permission grant set, the policy manager further calculating an intersection of the first and the second permission grant sets to determine whether the access to the protected file the third code assembly is permitted, a manifest defining…; application evidence to determine…; a leader to load the first…; and a policy manager to evaluate…" happens. What would happens if the: "if clause does not do the above conditions? This produced result remains in the abstract and, thus, fails to achieve the required status of having real world value.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 4-5, 8, 9-11, 13-14, 17-18, 20-21, 24, 26-27, 29-30, 33, 35, 37-39, and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gong, US Patent No. 6,044,467 in view of Scheifler et al., Patent No.: US 6,389,540 B1.

Referring to claims 1, 2, 17-18, and 33, Gong teaches a computer program product, a system, a computer-readable medium and a method comprising:

receiving a manifest defining first, second, and third code assemblies that are members of at least one application, wherein the manifest defines at least one trusted application and application evidence for making a trusted decision **[abstract, 6:30-43;** a search is performed for the code equate a manifest which defines trusted application and a predetermined mapping of code sources equate application evidence for making a trusted decision/permission];

evaluating the application evidence to determine if the at least one application is trusted **[11:58 - 12:5 and fig. 2B;** a code source that is mapped corresponding to evaluating the application evidence].

Gong does not appear to explicitly teach:

generating a first, a second, and a third permission grant set for the first, the second, and the third code assembly, respectively, that are members of the at least one application if the application evidence satisfies at least one condition for trusting the at least one application;

passing the permission grant to a run-time call stack;

calling the second code assembly by the first code assembly;

calling the third code assembly by the second code assembly, the third code assembly attempting access of a protected file; and

calculating an intersection of the first and the second permission grant sets to determine whether the access to the protected file is permitted. However, Scheifler teaches the permission objects, protection domain objects, and policy objects described above are used to determine access rights of a thread. According to an implementation consistent with the present invention, such access rights vary over time based on what code the thread is currently executing, and on which executor's behalf the thread is currently executing. The sequence of calls that resulted in execution of the currently executing code of a thread is reflected in the call stack of the thread. Reference to an exemplary call stack shall be made to explain the operation of a security mechanism that enforces access rights in a way that allows the rights to vary over time. **[abstract, 13:26-38 and**

fig. 6]. Scheifler further teaches in fig. 6, a call stack 6100 associated with a thread 6200 in which the method 6300-1 of an object 4500-1 calls the method 6300-2 of another object 4500-2 that calls the method 6300-3 of yet another object 4500-3 that calls a check permission method 6400 of an access controller object 6500 **[13:39-44 and fig. 6;** 6300-1 calls 6300-2 that calls 6300-3 that calls a check permission method 6400 of an access controller object 6500 equate calling the second code assembly by the first code assembly; calling the third code assembly by the second code assembly, the third code assembly attempting access of a protected file (also see 13:45 – 15:28 for details)]. Gong and Scheifler are analogous art because both teach stack based access control.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method of Gong to include stack based access control using code of Scheifler because the call stack stores representations of the methods and executors in an order of invocation by the operation. The execution unit grants access to the resource when the types of access authorized by the permissions of all of the methods and executors on the call stack encompass the access requested by the operation [abstract and fig. 6], please see KSR International Co. v. Teleflex Inc., 550 U.S-, 82 USPQ2d 1385 (2007) for further interpretation.

Referring to claims 4, 5, 20, 21 and 35, Gong teaches a computer program product, a system, a computer-readable medium and a method further comprising

evaluating application evidence at an application level/group level and a code assembly level before trusting the at least one application **[11:12-16, 13:66 – 14:2 and figs. 2B]**.

Referring to claims 8, 24, and 37, Gong teaches a computer program product, a system, a computer-readable medium and a method further comprising determining if the code assembly is a member of the at least one application **[7:20-25]**.

Referring to claims 10, 26 and 38, Gong teaches a computer program product, a system, a computer-readable medium and a method, wherein satisfying at least one trust condition is based at least in part on evidence provided with the at least one application **[6:35-43]**.

Referring to claims 11, 27 and 39, Gong teaches a computer program product, a system, a computer-readable medium and a method, wherein satisfying at least one trust condition is based at least in part on evidence external to the at least one application **[13:66 – 14:2]**.

Referring to claims 13, 29 and 41, Gong teaches a computer program product, a system, a computer-readable medium and a method, wherein satisfying at least one trust condition is based on evidence from user interaction **[10:31-39].**

Referring to claims 14, 30 and 42, Gong teaches a computer program product, a system, a computer-readable medium and a method, wherein satisfying at least one trust condition is based on evidence from evaluation of previous trust decisions **[13:66 – 14:2;** the received code source corresponding to previous trust decisions].

Referring to claim 43, Gong teaches a computer program product, a system, a computer-readable medium and a method further comprising a security policy specification defining the condition **[11:58 – 12:5-11 and fig. 2B].**

3. Claims 3, 19, 34 and 40 are rejected under 35 U.S.C. 103(a) as being obvious over Gong Patent No. 6,044,467 in view of Lao et al. Pub. No. US 2003/0220880 A1.

Referring to claims 3, 19, 34 and 40, Gong teaches a method of receiving a manifest defining first and second code assemblies that are members of at least one application, wherein the manifest defines at least one trusted application and application evidence for making a trusted decision (see claim 1 above). Gong further teaches generating a permission grant set for each code assembly **[6:45-50]**. Gong does not appear to explicitly teach a method wherein evaluating application evidence is based at least in part on an XrML license. However, Lao teaches a method such that access is granted based on a license, such as an XrML license, and the like, can be presented **[paragraph 0166]**. Gong and Lao are analogous art because both teach application security.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method of Gong to include a method such that access is granted based on a license, such as an XrML license of Lao because XrML license controls and specifies a manner of use of consumption of a distributed network service, please see KSR International Co. v. Teleflex Inc., 550 U.S-, 82 USPQ2d 1385 (2007) for further interpretation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YONAS BAYOU whose telephone number is (571)272-7610. The examiner can normally be reached on m-f,7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on 571-272-3811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yonas Bayou/

Examiner, Art Unit 2434

04/29/2009

/Kambiz Zand/

Supervisory Patent Examiner, Art Unit 2434